

Applicants again respectfully submit that the Examiner's characterization of the claimed invention is incorrect, because it implies that the present invention's microparticles or microspheres coated with autologous cells are mutually exclusive with those comprise one or more cell adhesion promoters. However, nothing in any of the claims or the specification suggests that a microparticle that is coated with autologous cells could not, at the same time, comprise one or more cell adhesion promoters. In fact, it is entirely possible that a microparticle of the present invention comprises both autologous cells and one or more cell adhesion promoters. Therefore, Applicants submit that the Examiner's characterization of the invention is incorrect, because microparticles coated with autologous cells are not mutually exclusive with microparticles comprising one or more cell adhesion promoters.

Therefore, Applicants respectfully submit that the Examiner's election requirement is contrary to the *MPEP* requirement that claims to be restricted must be mutually exclusive:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. *MPEP* § 806.04(f) (emphasis added).

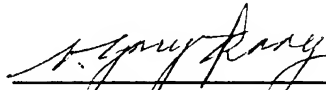
As discussed above, microparticles coated with autologous cells and microparticles comprising one or more cell adhesion promoters are in fact not mutually exclusive with each other. For this reason alone, the required election of species should be withdrawn. *Id.* Furthermore, the microparticles recited in claims 1-16 and 19-20, while maybe comprising different materials, such as autologous cells and/or cell adhesion promoters, all recite the features of biocompatible, hydrophilic, and suitable for treating gastroesophageal reflux disease. There is no suggestion that either microparticles coated with autologous cells or microparticles comprising one or more cell adhesion promoters do not require those features. Thus, a search to that effect would encompass both alleged species.

In conclusion, Applicants respectfully submit that the restriction and election of species requirements set forth in the Office Action are inappropriate and should be withdrawn.

No fee is believed due for this response. Should any fees be required, please charge such fees to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,

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